

December 20, 2012

To: Merchants in the U.S. and U.S. Territories

From: Visa Inc.

Re: Merchant Class Action Litigation Settlement – Important Changes to Merchant Acceptance Practices

In November 2012, the federal district court overseeing *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MDL 1720)*, the merchant class action interchange litigation against Visa and other defendants, preliminarily approved a class settlement agreement that resolves antitrust claims involving Visa's interchange and merchant acceptance rules in the U.S. and its territories. We are writing to inform you of the changes Visa is making to its rules, effective January 27, 2013, applicable to transactions at merchants in the U.S. and U.S. territories<sup>1</sup> ("U.S. merchants"). This letter describes certain merchant acceptance practices that will be permitted. The text of Visa's revised rules will be available at [www.visa.com](http://www.visa.com) in mid-January.

Visa's Operating Regulations already allow merchants to engage in certain practices to steer customers to forms of payment other than Visa cards, including offering discounts to customers that initially present a Visa card to steer to another payment type or to a different type of Visa card. Following this settlement, U.S. merchants may surcharge Visa Credit card transactions (not debit or pre-paid card transactions) at the Visa "brand level" or at the "product level," but not both, subject to the following requirements:

**First, a U.S. merchant's surcharges on Visa Credit card transactions cannot exceed certain levels.** U.S. merchants who surcharge at the "brand level" may impose a surcharge on Visa Credit card transactions if the surcharge:

- is the same for all Visa Credit card transactions, regardless of the card's Issuer or product type (e.g., Visa Traditional, Visa Traditional Rewards, Visa Signature, Visa Signature Preferred);
- is no greater than the merchant's average discount rate for Visa Credit card transactions for the preceding one month or 12 months; and

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<sup>1</sup> This includes American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Puerto Rico, U.S. Outlying Islands, and U.S. Virgin Islands.

- does not in any event exceed 4% (even in cases where the merchant's average discount rate exceeds 4%).

U.S. merchants who surcharge at the “product level” may impose a surcharge on Visa Credit card transactions if the surcharge:

- is the same for all transactions on the particular product type (e.g., Visa Traditional, Visa Traditional Rewards, Visa Signature, Visa Signature Preferred), regardless of Issuer;
- is no greater than the merchant's average discount rate associated with the Visa Credit card product type transactions being surcharged for the preceding one month or 12 months, minus the regulated debit cap established by the Board of the Governors of the Federal Reserve System;
- does not in any event exceed 4% (even in cases where the merchant's average discount rate exceeds 4%).

**Second, for U.S. merchants that accept credit or charge cards of other payment network brands, surcharging practices are subject to a competitive “level playing field” limitation that depends on whether those payment network brands impose surcharge restrictions on credit cards and the merchants' costs of accepting those credit cards:**

- If the merchant accepts a competing payment network brand that is as or more expensive to the merchant than Visa, and that competing payment network limits the merchant's ability to surcharge credit cards, the merchant may surcharge Visa Credit cards only in the same way as the merchant would be allowed to surcharge the competing payment network's credit card (or on the terms on which the merchant actually surcharges the competing payment network's credit cards).
- If the merchant accepts a competing payment network brand of credit card that prohibits or effectively prohibits the merchant from surcharging in a particular channel of commerce (i.e. either face-to-face or non-face-to-face), the merchant may not surcharge Visa Credit cards unless it also surcharges the competing payment network's credit cards regardless of the cost of that card to the merchant. The amount of the surcharge on the competing payment network brand must equal at least the lesser of: the cost to accept the competing brand's credit cards or the surcharge imposed on Visa Credit cards.

This cost-based comparison is performed by comparing the merchant's Visa Credit card cost of acceptance (the average effective interchange rate plus the average of all network fees imposed on merchants or acquirers applicable to Visa credit card transactions at the merchant for the preceding one or twelve months), with the merchant's cost of acceptance for other credit card networks (the average merchant discount rate for the preceding one or twelve months). If the

merchant cannot determine its Visa Credit card cost of acceptance, a merchant may use the Visa Credit card cost of acceptance for its merchant category, which is available on [www.visa.com/merchantsurcharging](http://www.visa.com/merchantsurcharging), to compare its Visa Credit card cost of acceptance in the merchant's category to the cost of accepting competing payment network credit cards.

A U.S. merchant can "contract out" of these competitive "level playing field" provisions by entering into an individually negotiated agreement with another payment network in which the merchant waives or limits its ability to surcharge transactions on the competitive credit card brand, as long as the agreement is for a fixed duration, the merchant's acceptance of the competitive credit card brand is unrelated to and not conditioned on the merchant's entry into the agreement, the agreement is supported by independent consideration, and the agreement expressly specifies a price at which the merchant may accept transactions on the competitive payment network credit card brand and surcharge those transactions up to the merchant's discount rate for the other credit card brand.

**Third, a U.S. merchant that chooses to surcharge Visa Credit card transactions must satisfy notification and disclosure requirements.** A U.S. merchant that intends to surcharge must provide advance written notice to both Visa and the merchant's acquirer at least 30 days prior to surcharging, which must identify whether the merchant intends to impose surcharges at the brand or product level. Merchants can easily provide this notification to Visa through the [www.visa.com/merchantsurcharging](http://www.visa.com/merchantsurcharging) site. While notifications may be provided beginning December 20, 2012, actual surcharging of Visa Credit transactions may not commence until January 27, 2013. Please contact your acquirer for their notification requirements.

In addition, a U.S. merchant who surcharges must provide clear disclosure to the merchant's customers (1) **at the point of store entry**, or in an online environment on the first page that references credit card brands, that the merchant imposes a surcharge that is not greater than its applicable merchant discount rate for Visa Credit card transactions; (2) **at the point of interaction** or sale with the customer, of the merchant's surcharging practices (including the amount of any surcharges that the merchant imposes and a statement that the surcharge is being imposed by the merchant), in a manner that does not disparage the brand, network, issuing bank, or the payment card product being used; and (3) of the dollar amount of the surcharge **on the transaction receipt** provided by the merchant to its customers.

Merchants must continue to respect a cardholder's decision to pay with Visa: the settlement does not impact merchants' existing obligation to accept for payment properly presented Visa cards, including rewards cards. In addition, the rule changes that Visa is implementing under the settlement do not affect any obligation of a U.S. merchant to comply with all applicable state or federal laws, including state laws regarding surcharging of credit or debit card transactions, and federal and state laws regarding deceptive or misleading disclosures.

## **Additional Practices and Policies**

- Visa will meet with merchant buying groups that meet certain criteria and that seek to negotiate proposals that provide reasonable commercial benefits to both parties
- A merchant will be permitted to decline acceptance of Visa products at all of its merchant outlets that operate under the same trade name or banner in the United States

If you have any questions regarding merchant surcharging, please contact your acquirer or visit [www.visa.com/merchantsurcharging](http://www.visa.com/merchantsurcharging).